



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 20 2009

REPLY TO THE ATTENTION OF

(AE-17J)

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Frazer, President
Leroy Iron and Metal, Division of Behr Iron
2275 Dale Avenue
Leroy, Minnesota 55951

Re: Leroy Iron and Metal, Leroy, Minnesota

Dear Mr. Frazer:,

Enclosed is your copy of the signed Administrative Consent Order (ACO) which resolves the violations of the safe disposal requirements found at 40 C.F.R. 82.156(f) identified in the ACO.

The terms of this ACO became effective on the date of signature by the Director, and are binding for two years from the effective date. Failure to comply with this ACO may subject Leroy Iron and Metal to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

Should you have any questions, please contact Mr. Richard Clarizio, Associate Regional Counsel, at (312) 886-0559, or Ms. Lynne Roberts, of my staff, at (312) 886-0250.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Marable".

Brent Marable, Chief
Air Enforcement and Compliance Assurance Section (II/IN)

Enclosures: ACO

cc: Lynne Roberts (AE-17J)
Richard Clarizio (C-14J)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	EPA-5-09-113(a)-MN-15
)	
Leroy Iron & Metal)	Proceeding Under Sections 113(a)(3)
Division of Behr Iron)	and 114(a)(1) of the Clean Air Act
Leroy, Minnesota)	42 U.S.C. §§ 7413(a)(3) and 7414(a)(1)
)	
)	
)	

Administrative Consent Order

1. The Director of the Air and Radiation Division ("Director"), U.S. Environmental Protection Agency, Region 5 ("USEPA" or "EPA"), and Leroy Iron and Metals ("Leroy") are entering into this Administrative Consent Order ("ACO" or "Order") under Section 113(a)(3) and 114(a)(1) of the Clean Air Act ("Act"), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

I. Statutory and Regulatory Background

2. Section 113(a)(3)(B) of the Act, 42 U.S.C. § 7413(a)(3)(B), authorizes the Administrator of EPA to issue an order requiring compliance with Title VI of the Act to any person who has violated or is violating any requirement of Title VI of the Act. The Administrator of EPA has delegated her order authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-6-A. The Regional Administrator of EPA, Region V, has delegated his order authority to the Director pursuant to EPA Region V Delegation 7-6-A.

3. Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a) authorizes the Administrator of EPA to require any person who owns or operates an emission source to

make reports and provide information required by the Administrator. The Administrator of EPA has delegated her information gathering authority to the Regional Administrator of EPA, Region V pursuant to EPA Headquarters Delegation 7-8. The Regional Administrator of EPA, Region V, has delegated his information gathering authority to the Director pursuant to EPA Region V Delegation 7-8.

4. According to section 113(a)(4) of the Act, 42 U.S.C. § 7413(a)(4), an order issued under section 113(a)(3)(B) shall not take effect until the person to whom it is issued has had an opportunity to confer with EPA concerning the alleged violations. The order must state with reasonable specificity the nature of the violations and the time for compliance taking into consideration the seriousness of the violation and any good faith efforts to comply. The order shall require compliance as expeditiously as practicable but in no event longer than one year after the date of issuance of the order.

5. Title VI of the Act, 42 U.S.C. § 7671, *et seq.* provides for the protection of stratospheric ozone. Section 608(b) of the Act, 42 U.S.C. § 7671g(b) provides EPA with the authority to regulate the safe disposal of class I and II substances. Class I and II substances include refrigerant containing chlorofluorocarbons ("CFCs"). In the May 14, 1993, Federal Register, 58 Fed. Reg. 28660, EPA promulgated regulations covering the safe disposal of CFCs from small appliances and motor vehicles. The regulations are found in Subpart F of Part 82 of Title 40 of the Code of Federal Regulations, 40 C.F.R. Part 82, Subpart F.

6. Effective July 13, 1993, persons who take the final step in the disposal process (including but not limited to scrap recyclers) of small appliances and motor vehicle air conditioner ("MVAC") units must either recover the refrigerant in accordance with

specific procedures or verify with signed statements that the refrigerant was properly evacuated and recovered prior to receipt of the small appliance or MVAC unit. See 40 C.F.R. § 82.156(f). If verification statements are used then the suppliers of the small appliance or MVAC units must be notified of the need to properly evacuate and recover the refrigerant. See 40 C.F.R. § 82.156(d)(3). Verification statements must be kept on-site for a minimum of three years. See 40 C.F.R. § 82.166(i) and (m).

II. Findings

7. Leroy owns and operates a scrap metal recycling facility at 2275 Dale Avenue, Leroy, Minnesota. Leroy is a corporation organized and doing business in Minnesota. Leroy is a person as defined by 40 C.F.R. § 82.156

8. On September 30, 2008, EPA issued to Leroy a request for information pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. § 7414(a). EPA requested information regarding Leroy's business practices related to the safe disposal requirements found in 40 C.F.R. Part 82, Subpart F.

9. On October 17, 2008, Leroy responded to EPA's information request.

10. Leroy accepted small appliances and MVAC units. These items contained or once contained refrigerant.

11. Leroy did not have equipment for the recovery of refrigerant from the small appliances or MVAC units it received.

12. Leroy stated that it has contracts from its suppliers of small appliances to remove the refrigerant from the small appliances it received. Leroy identified two suppliers of small appliances, Doug Bruening and Waste Management.

13. Prior to October 1, 2008, Leroy did not have verification statements or an equivalent contract for the MVAC units it received, stating that refrigerant would be removed properly prior to delivery at its facility.

14. Leroy is a person who takes the final step in the disposal process of a small appliance, room air conditioners, MVAC, or MVAC-like appliance and is subject to the requirements of 40 C.F.R. Part 82, Subpart F.

III. Compliance Program and Agreement

15. Leroy agrees to comply with 40 C.F.R. Part 82. Additionally, Leroy agrees to implement the following actions for one year after the effective date of this order for any small appliance and MVAC that it receives at its facility.

16. Within thirty (30) days of receipt of this order, Leroy agrees to recover any remaining refrigerant from each appliance and MVAC it accepts. Leroy agrees that it will recover the refrigerant in accordance with 40 C.F.R. Section 82.156(f)(1) or verify that the refrigerant has been previously evacuated from the appliance or shipment of appliances in accordance with Section 82.156(f)(2).

17. If Leroy recovers refrigerant or arranges for it to be recovered by a third party, Leroy agrees that it will develop, use, and maintain for one year a log which contains the following information: the date refrigerant was removed, how much was recovered, the type of refrigerant recovered, and the name of the person responsible for recovering the refrigerant. Leroy will also have a refrigerant recovery contract in place with each third party it has recovering the refrigerant. The refrigerant recovery contract will be signed by both parties and contain a specific time frame for performance. This

contract will not automatically renew. The contract will require refrigerant recovery in accordance with the procedures identified in 40 C.F.R. 82.156(g) and (h).

18. If Leroy uses a verification statement, then Leroy agrees that the verification statement will include a signed statement from the person from whom the appliance or shipment of appliances is obtained that all refrigerant that had not leaked previously had been recovered from the appliances in accordance with 40 C.F.R. Section 82.156(g) or (h), as applicable. Leroy agrees that the statement will include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. Leroy will have its suppliers use the verification statement included as Attachment 1 to this order.

19. If Leroy uses a contract as an equivalent to the verification statement pursuant to 40 C.F.R. Section 82.156(f)(2), Leroy agrees that the contract will identify the entity responsible for recovering refrigerant and the period of time covered by the contract. Leroy agrees that the contract will include enough information for EPA and Leroy to determine that the person recovering the refrigerant has knowledge of how the refrigerant is to be recovered in order to meet the requirements of 40 C.F.R. Section 82.156(g) or (h).

20. Leroy agrees to maintain copies of the signed verification statements and equivalent contracts on site for three years in accordance with 40 C.F.R. Section 82.166(i) and (m).

21. In accordance with 40 C.F.R. Section 82.156(g), Leroy agrees that it will not knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances or MVACs while maintaining, servicing, repairing, or disposing of

appliances. Leroy agrees that it will not accept any small appliance or MVAC where it has a reasonable basis to believe the refrigerant has been vented to the environment.

22. Leroy agrees that it will not accept small appliances with cut or missing refrigerant lines. Leroy agrees that it will not accept small appliances and verification statements from peddlers whom Leroy suspects falsified the information (e.g., identified themselves as being the person who recovered the refrigerant without verification of the date, equipment used and amount recovered). Leroy agrees that it will not accept small appliances where the peddler has indicated that the refrigerant leaked or where the refrigerant lines have been cut. Peddlers are individuals who transport to Leroy shipments with a few small appliances.

23. Leroy agrees that it will provide EPA with confirmation that the above requirements have been met within sixty (60) days of receipt of this order by providing the Agency with:

- a. a blank copy of the verification form Leroy uses to verify proper refrigerant recovery including fields to enter the name and address of the person who recovered the refrigerant and the date recovered;
- b. copies of signed, dated verification forms or equivalent contracts from the effective date of this order; and
- c. a listing of all shipments of small appliances that it rejected because the refrigerant lines were cut or missing or the peddler identified itself as the entity responsible for refrigerant recovery.

IV. General Provisions

24. Leroy agrees to the terms of this order.

25. Leroy will not contest the authority of EPA and it to enter into this agreement. Leroy waives any further opportunity to confer or have a hearing.

26. This order does not affect Leroy's responsibility to comply with other federal, state, and local laws.

27. Leroy may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to U.S. EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Leroy fails to assert a business confidentiality claim, U.S. EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the Act, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

28. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation. To aid in our electronic record keeping efforts, please provide your response to this order without staples. Paper clips, binder clips, and 3-ring binders are acceptable.

29. This order does not restrict EPA's authority to enforce any violations of the Act.

30. Failure to comply with this order may subject Leroy to penalties of up to \$37,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413 and 40 C.F.R. Part 19.

31. The terms of this order are binding on Leroy, its assignees, and successors. Leroy must give notice of this order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA that it has given the notice.

32. EPA may use any information submitted under this order in an administrative, civil, judicial, or criminal action.

33. This order is effective on the date of signature by the Director. This order will terminate one year from the effective date, provided that Leroy has complied with all terms of the order throughout its duration.

34. All reports required by this order shall be sent to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson
Chicago, Illinois 60604

35. Leroy certifies that it is complying fully with 40 C.F.R. Part 82.

36. Each person signing this order certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

- 9

Will use for
Companies and individuals
that come in all year
Long. more in appliances



LeRoy Iron & Metal

Clean Air Act – Continuous Customer Agreement

This Agreement is made this _____ day of _____, 20____ and expires on -
_____. This Agreement is made between
_____ (hereinafter "BUYER") and _____
(hereinafter "SELLER");

SELLER NAME: _____

STREET ADDRESS: _____

CITY/STATE/ZIP: _____

TELEPHONE NUMBER: _____

This document confirms the Agreement between BUYER and SELLER regarding the buying and selling of scrap materials containing refrigerants as defined in section 608 of the Clean Air Act and 40 CFR Part 82 (essentially any substance consisting in part or in whole of a class I or class II ozone-depleting substance that is used for heat transfer purposes and provides a cooling effect). BUYER and SELLER are willing to proceed with buying and selling these scrap materials solely on the basis of receiving the certifications set forth below. Accordingly, the BUYER and the SELLER agree as follows:

1. SELLER and BUYER have an ongoing business relationship in which SELLER routinely and continuously provides scrap materials to BUYER in exchange for monetary payment; and
2. SELLER desires to continue to provide BUYER with scrap materials in exchange for monetary payment on a routine and continuing basis, including, but not limited to the following materials (please check all that apply):
 - () refrigerators
 - () air conditioners
 - () automobiles
 - () other _____; and
3. BUYER is only willing to purchase scrap materials from SELLER upon certification from SELLER that the scrap materials are free of all refrigerants as defined in section 608 of the Clean Air Act and 40 CFR Part 82; and

4. In consideration of BUYER'S purchase of scrap materials, SELLER certifies that all scrap materials it sells to BUYER are free of all refrigerants as defined in section 608 of the Clean Air Act and 40 CFR Part 82, and that the refrigerant has been recovered in accordance with 40 CFR Part 82.156(g) or (h); and

5. In consideration of BUYER'S purchase of scrap materials, SELLER also certifies that SELLER will maintain all records required under section 608 of the Clean Air Act and 40 CFR Part 82 relating to SELLER'S removal or reclamation of any and all refrigerants from the scrap materials, that SELLER will maintain the required records for a minimum period of three years from the date of sale to the BUYER, and that these records shall include verification statements that meet the requirements of 40 CFR Part 82.156(f) if SELLER does not recover refrigerant itself; and

6. SELLER agrees to indemnify and hold BUYER harmless from any claim, civil lawsuit, administrative action, penalty, fine, fee, cost, attorney fee, or any other liability resulting in whole or in part from SELLER'S breach of this agreement; and

7. BUYER and SELLER may immediately cancel this Agreement at anytime and for any reason; however, indemnity and certification survive any such cancellation; and

8. All notices provided in accordance with this Agreement, including notice of cancellation, must be in writing and addressed to either party at their respective addresses as contained herein; and

9. This Agreement contains all the terms agreed by the parties regarding its subject matter and supersedes any prior agreements, understandings, or arrangements between them, whether oral or written. This Agreement shall be governed by the laws of _____. This Agreement shall be binding upon and for the benefit of the parties and their respective successors and assigns; but shall not be assignable without the written consent of the other party. The failure of either party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.

Please indicate your acceptance of and agreement with the terms and conditions set forth above by signing where indicated below.

BUYER: _____ DATE: _____
(Signature and title)

SELLER: _____ DATE: _____
(Signature and title)

As authorized to sign on behalf of: _____

Will use
for Appliances that a
Customer comes in once & awhile



Certification of CFC Removal

In compliance with the U.S. Environmental Protection Agencies Refrigerant Recycling Requirements under section 608 of the Clean Air Act, and 40 CFR Part 82, as applicable. LeRoy Iron & Metal requires your certification that all refrigerant (including but not limited to chlorofluorocarbons (CFCs) and hydrochloroflourocarbons (HCFCs) have been removed in accordance with EPA regulatory requirements from ___ scrap ___ appliances, _____ or air conditioning systems you are offering us for sale. Please understand LeRoy Iron & Metal will reject shipments of scrap for noncompliance with this requirement.

The EPA requires that a dismantler of an appliance containing a refrigerant must do the following prior to disposal:

1. Recover 90% of the refrigerant in the appliance when the compressor in the appliance is operating, or 80% of the refrigerant in the appliance when the compressor in the appliance is not operating; OR
2. Evacuate the small appliance to 4 inches of mercury vacuum.

I certify that I have properly removed refrigerant from the scrap offered for sale prior to delivering it to LeRoy Iron & Metal.

COMPANY NAME: _____

ADDRESS: _____

CITY, STATE, ZIP: _____

DATE REFRIGERANT WAS RECOVERED: _____

TELEPHONE: _____

SIGNATURE: _____

SALE DATE: _____

we will use
for MUA's That
Come in once &
a while



LEROY IRON & METAL

Date: _____

Certification of CFC removal from automobiles

By this agreement we hereby certify and agree that all refrigerants and other ozone-depleting chemicals (CFCs) will be properly removed from automobiles in accordance with applicable EPA and State requirements prior to delivery of automobiles to LeRoy I & M. We understand that LeRoy I & M will reject shipments of automobiles for noncompliance with this requirement.

In consideration of purchase of this material we, the seller, certify that all refrigerant (including but not limited to chlorofluorocarbons (CFCs) and hydrochloroflourocarbons (HCFCs), as defined in Section 608 of the Clean Air Act and 40 CFR Part 82) that has not leaked previously will be recovered from automobiles to be delivered under this contract of sale prior to delivery. We, the seller, further agrees to indemnify and hold LeRoy I & M harmless from any claim, penalty, fine, fee, cost, attorney's fees, of other liability resulting in whole or in part from seller's breach of certification.

Company Name _____

Address _____

City, State, Zip _____

Authorized Signature _____

Name (please print) _____

Date: _____

CERTIFICATE OF MAILING

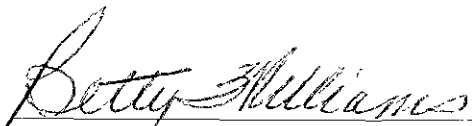
I, Betty Williams, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-MN-15, by Certified Mail, Return Receipt Requested, to:

John Frazer, President
Leroy Iron and Metals, Division of Behr Iron
2275 Dale Avenue
Leroy, Minnesota 55951

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-09-113(a)-MN-15, by First Class Mail to:

Katie Koelfgen, Supervisor
Air Quality and Enforcement Unit
MPCA
520 Lafayette Road
St. Paul, MN 55155

on the 21st day of August 2009.


Betty Williams, Secretary
AECAS, (IL/TN)

CERTIFIED MAIL RECEIPT NUMBER: 7001 0320 0005 8916 0217